

## REMARKS

This Amendment is submitted in response to the final Office Action mailed on September 7, 2006. A petition for a two month extension of time is submitted herewith. The Director is authorized to charge \$450 for the petition for extension of time and any additional fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-486 on the account statement.

Claims 1 and 3-17 are pending in this application. Claim 2 was previously canceled. In the Office Action, the specification is objected to; Claims 1 and 3-17 are rejected under 35 U.S.C. §112, first paragraph; Claims 1, 5, 8 and 10-11 are rejected under 35 U.S.C. §102, and Claims 3-4, 6-7, 9 and 12-17 are rejected under 35 U.S.C. §103. In response, Claims 1 and 12 have been amended. This amendment does not add new matter. In view of the amendment and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, the specification has been objected to. In response, Applicants have amended the specification to address the informalities cited by the Patent Office. Accordingly, Applicants respectfully request that the objection to the specification be withdrawn.

In the Office Action, Claims 1 and 3-17 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. In response, Applicants have amended Claims 1 and 12 as suggested by the Patent Office. Accordingly, Applicants respectfully request that the rejection of Claims 1 and 3-17 under 35 U.S.C. §112, first paragraph, be withdrawn.

In the Office Action, Claims 1, 5, 8 and 10-11 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 4,012,533 to Jonas et al. ("*Jonas*"). Applicants respectfully disagree with and traverse this rejection for at least the reasons set forth below.

Independent Claim 1 has been amended to recite, in part, a milk product that has a mixture of at least two emulsifiers and a foam stabilizer, wherein the milk product is high temperature processed and is room temperature stable. The amendment as discussed above is supported in the specification, for example, on page 2, lines 5-13, page 3, lines 14-20 and page 4, lines 12-18. In contrast, Applicants respectfully submit that *Jonas* fails to disclose or suggest every element of the present claims as currently amended.

The present invention is directed, in part, to providing a specific heat treated foaming milk product that represents, for example, a new and innovative solution for providing a milk based foamed composition that remains stable for a while once poured or deposited onto the surface of a beverage, especially a hot beverage like coffee, tea or chocolate, and that acts simultaneously as a beverage whitener/foamer. Applicants have surprising found that foamability at room temperature can be achieved by means of duly selected emulsifiers which belong to distinct categories or chemical classes, i.e. propylene glycol saturated fatty acid esters, sorbitan saturated fatty acid esters and unsaturated monoglycerides. Foam stability (once the foam is poured onto the beverage surface) can be achieved by means of duly selected foam stabilizers, namely a combination of microcrystalline cellulose (MCC) and carboxymethylcellulose (CMC) or sodium alginate. Further, the finished milk product, upon being heat treated by pasteurization, sterilization or ultra-high temperature processing, still retains its foam-forming structure while also achieving room temperature stability (also referred to as shelf stability).

*Jonas* fails to disclose or suggest any milk product for providing at room temperature a foamed composition for beverages, as required, in part, by Claim 1. In contrast, *Jonas* is directed to a multipurpose whipped dessert which may be consumed in the frozen state as an ice-cream type product or alternatively in the thawed state as a whipped topping. See, *Jonas*, column 1, lines 5-13. *Jonas* teaches its essential feature being to provide a whipped food composition which is "freeze-thaw stable" such that it may be alternatively consumed as an ice-cream or as a whipped topping and may be refrozen between consumptions. See, *Jonas*, column 2, lines 14-39.

In discussing consumption of an ice-cream type product, *Jonas* does not teach or suggest a milk product that provides a foamed composition for beverages (e.g. as coffee whitener/foamer) in accordance with Claim 1. When referring to the use of the thawed form as whipped dessert, *Jonas* teaches that the "dessert product is resistant to syneresis and/or foam collapse in the foamed condition and its foam structure is of sufficient strength that while in the thawed state various fruits, flavoured syrups... and the like may be blended into the dessert..." This fails to disclose or suggest a product that is a milk product for providing at room temperature a foamed composition for beverages.

*Jonas* also fails to disclose or suggest a milk product that is high temperature processed and room temperature stable as required, in part, by Claim 1. By contrast, *Jonas*, in each of its examples, teaches heating of specific ingredients (e.g. skim milk) or intermediate mixtures (e.g. the mix prior to added emulsifiers) without any high temperature treating of the final mixture prior to packaging. See, for example, *Jonas*, column 9, lines 43-54 and column 11, lines 28-44. In these examples, *Jonas* teaches cooling down the mixture before adding emulsifiers to the emulsion. The addition of emulsifiers after heating greatly assists in maintaining emulsion stability. Were the finished emulsion of *Jonas* high heat treated after emulsifier addition, it is a strong possibility that the emulsion would break or, at the very least, that the protein emulsion would not function as disclosed. On the other hand, the present invention is able to provide a shelf-stable product by high temperature processing without sacrificing the stability and performance of the product.

Moreover, though the Office Action alleges that the protein emulsion in *Jonas* reads on Applicants' claims, *Jonas* uses the protein emulsion as an intermediate composition that, after being mixed with a second composition, is whipped and packaged at freezing temperatures. See, for example, *Jonas*, column 10, lines 24-37. Consequently, no heating step occurs after the formation of the protein emulsion. Rather, the total composition is cooled down significantly to maintain product stability. Accordingly, *Jonas* fails to disclose or suggest room temperature stability or high temperature processing of its finished frozen aerated dessert, or any finished portions of the dessert, namely the protein emulsion.

For at least the reasons discussed above, Applicants respectfully submit that independent Claim 1 and Claims 5, 8 and 10-11 that depend from Claim 1 are novel, nonobvious and distinguishable from the cited reference.

Accordingly, Applicants respectfully request that the rejection of Claims 1, 5, 8 and 10-11 under 35 U.S.C. §102 be withdrawn.

Claims 3-4, 6-7, 9, 15 and 17 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Jonas* in view of U.S. Patent No. 6,033,711 to Gonsalves et al. ("*Gonsalves*"), U.S. Patent No. 3,230,091 to Thompson ("*Thompson*") and U.S. Patent No. 5,759,609 to Lynch ("*Lynch*"). Applicants respectfully submit that the patentability of Claim 1 as previously discussed renders moot the obviousness rejection of Claims 3-4, 6-7, 9, 15 and 17 that depend from Claim 1. In

this regard, the cited art fails to teach or suggest the elements of Claims 3-4, 6-7, 9, 15 and 17 in combination with the novel elements of Claim 1.

In the Office Action, Claims 12-14 and 16 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Jonas* in view of *Gonsalves*, *Thompson* and *Lynch*. Applicants believe this rejection is improper and respectfully traverse it for at least the reasons set forth below.

Independent Claim 12 has been amended to recite, in part, a method of forming a milk product for providing at room temperature, either by shaking or with a foaming device, a foamed composition for beverages comprising high temperature processing the milk product, wherein the milk product is room temperature stable. The amendment as discussed above is supported in the specification, for example, on page 2, lines 5-13, page 3, lines 14-20 and page 4, lines 12-18. In contrast, Applicants respectfully submit that all of the claimed elements are not taught or suggested by the cited references.

For example, *Jonas* and *Gonsalves*, *Thompson* and *Lynch* fail to disclose or suggest high heat processing of a milk product as required, in part, by Claim 12. *Jonas* also fails to disclose or suggest a method of forming a milk product for providing at room temperature a foamed composition for beverages as required, in part, by Claim 12. *Jonas* provides no teaching or guidance as to how its product can be used as a beverage whitener/foamer in accordance with the present claims.

Applicants also respectfully submit that *Gonsalves*, *Thompson* and *Lynch* fail to remedy the deficiencies of *Jonas*. *Gonsalves* is directed to a fat-free/low-fat frozen whipped topping, preferably a non-dairy, frozen whipped topping which be freeze-thawed stable and which will retain a stable foam structure and texture for a while, in fact around 3 weeks, during storage. See, *Gonsalves*, column 1, lines 10-15. *Gonsalves* teaches essentially a non-dairy food product, which teaches away from the present claims directed, in part, to a milk product. Moreover, there is no teaching or guidance in *Gonsalves* regarding a method of forming a milk product that provides a foamed composition for beverages, in accordance with Claim 12.

*Thompson* is directed to a whipped topping used to top desserts. See, *Thompson*, column 1, lines 8-10. *Lynch* is directed to a low-fat whipped topping, more specifically to a dairy-free non-fat whipped topping food product that can be stored frozen in an unwhipped state for an indefinite period of time, thawed and whipped into a whipped dessert, which explicitly teaches away from Claim 12. See, *Lynch*, column 2, lines 8-10. Moreover, *Thompson* and *Lynch* fail to

disclose, suggest, or even teach a method of forming a milk product for providing at room temperature a foamed composition for beverages as required, in part, by Claim 12.

For at least the reasons discussed above, the combination of *Jonas* in view of *Gonsalves*, *Thompson* and *Lynch* do not teach, suggest, or even disclose all of the elements of the present claims, and thus, fail to render the claimed subject matter obvious.

Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claims 3-4, 6-7, 9 and 12-17 be reconsidered and the rejection be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

← ~~BELL, BOYD & LLOYD LLC~~

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